



Republic v Baringo County Public Service Board; Mwangi & 32 others (Exparte) (Miscellaneous Judicial Review 1 of 2018) [2024] KEELRC 1607 (KLR) (25 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1607 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
MISCELLANEOUS JUDICIAL REVIEW 1 OF 2018**

**HS WASILWA, J
JUNE 25, 2024**

BETWEEN

REPUBLIC OF KENYA APPLICANT

AND

BARINGO COUNTY PUBLIC SERVICE BOARD RESPONDENT

AND

ZIPPORAH MWANGI & 32 OTHERS EXPARTE

JUDGMENT

1. Pursuant to leave granted by this Court on the 10th April, 2018, the *ex parte* Applicants filed the substantive Notice of Motion dated 13th April, 2018 on 17th April, 2018. The Application is brought under section 8 and 9 of the [Law Reforms Act](#), section 21 of the [Government Proceedings Act](#) and Order 53 of the [Civil Procedure Rules](#) seeking for the following Orders; -
 1. That this Honourable Court be pleased to issue orders of *mandamus* compelling the Respondent to pay the *ex parte* Applicants through M/S Julius Juma & Co. Advocates, the sum of Kenya Shillings Two Million, Five Hundred and Ninety-Two Thousand, Nine Hundred and Seventy (Kshs 2,592,970) being the costs assessed by the deputy registrar in the ELRC Petition No 10 of 2015 and certified by the certificate of costs and certificate of Orders issued on the 20th October, 2016
 2. That the costs of this Application be in the cause.
2. The basis upon which the Application is made is that the Court delivered its Judgement on 22nd July, 2016 in ELRC Petition No 10 of 2015 ordering the Respondent to pay costs of the suit to the Applicant.



3. That on 11th October, 2016, the Deputy Registrar assessed the costs payable to the Applicants and issued a certificate of costs on 20th October, 2016 under section 21 of the [Government Proceedings Act](#).
4. It is stated that both the Respondents and its advocates were served with the certificate of costs and certificate of Order and despite service of these Orders and various reminders, the Respondent ignored, disregarded and or refused to abide by the Court's judgement and the decree ensuing therefrom.
5. It is averred that it is necessary that this Court takes necessary steps to enforce the Orders so as to guard jealously the sanctify of its authority.
6. The Application herein is supported by the verifying affidavit of Zipporah Mwangi, the 1st *ex parte* Applicant, who reiterated the grounds of the Application and urged this Court to allow the Application as prayed.
7. The Application is opposed by the Respondent who filed a replying affidavit sworn by Mark Suge, the Chairperson of the Respondent, on 21st May, 2018.
8. In the affidavit, the deponent avers that the Application is premature, misconceived and incompetent as the person to whom the Application is being brought have not authorized the filling of this Application.
9. It is averred that the Application is *res judicata* and bad in law, in view of existence of decree in Nakuru Judicial Review No 4 of 2017, where the prayers sought herein were declined and the said decree has not been challenged or appealed by the *ex parte* Applicants.
10. He stated that the matter directly and substantially in the present application was orders of *mandamus* compelling the payment of costs in issues, which the Court declined. Therefore, that the Application herein is *res judicata* and cannot be opened afresh through this suit.
11. He maintained that this Application contravenes section 103 of the [Public Finance Management Act](#), which vest statutory powers of payments on other statutory bodies and not the Respondent herein. Therefore, that the application herein is not merited and should be dismissed.
12. The Application herein was canvassed by written submissions.

***ex parte* Applicant's Submissions**

13. The *ex parte* Applicant submitted that they obtained a favourable judgement and taxed its costs, which was awarded by the taxing master in the sum of Kshs 2,592,970 on 20th October, 2016. That the taxed costs were served upon the Respondent who refused and or failed to pay the said costs, leading to the filling of this Application seeking for an Order of *mandamus*. In support of this, they relied on the case of [Republic v Permanent Secretary, Ministry of State for Provincial Administration and Internal Security ex parte Fredrick Manoah Egunza](#) [2012] eKLR where the Court held that:-

“In ordinary circumstances, once a judgment has entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can



only be enforced by way of an order of *mandamus* compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the [Government Proceedings Act.](#)”

14. Accordingly, that the *ex parte* Applicants submitted that the costs subject of this proceedings were taxed in October, 2016 and the Respondent have never objected to the same as such they are due and remain unpaid to date.
15. On whether the proceedings herein are premature, it was argued that judgement was delivered on 22nd July, 2016, taxation done on 11th October, 2016 and certificate issued on 20th October, 2016 as such the proceedings herein are not premature.
16. On whether this Application is *res judicata*, it was argued that indeed JR Application Number 4 of 2017 was filed but that the same was not determined on merit rather that the Application was declined on the basis that the Application had not been served on the Respondent in line with section 21 of the [Government Proceedings Act.](#) Hence, the claim for *res judicata* is unfounded.
17. It was also submitted that *res judicata* is a civil law doctrine that does not apply to judicial review applications that aim to right wrongs committed by the people in public authority. It was argued that as long as the public authority continues to commit wrongs for which Judicial review writs would issue, the affected party should remain at liberty to seek reprieve from the courts. In support of this, they relied on the case of [Jotham Mulati Welamondi v The Electoral Commissions of Kenya](#) Bungoma H.C Misc. appl. No 81 of 2002 [2002] 1KLR 4.
18. I have examined the submissions and averments of the parties herein. It is indeed true that judgment was entered against the Respondents in ELRC Petition No 10 of 2015. Costs were also taxed in the same petition by the Deputy Registrar in October 2016 under Section 21 of the [Government Proceedings Act.](#)
19. The Respondents were also served with the certificate of order and certificate of costs which they have not denied.
20. The Respondents had submitted that this matter is *res judicata* in relation to Judicial Review application No 8 of 2017. I have however considered the ruling from the Court of Appeal JJA Ochieng, Achode and Kiru of 24.11.2023 which ordered the application to be remitted back to the Superior Court for the application to be determined on merit.
21. The issue of the application being *res judicata* is therefore not true. That notwithstanding, the Applicant has demonstrated that indeed they are entitled to payment of the money 2,592,970= being costs assessed by the Deputy Registrar in ELRC No 10 of 2015 and certified by the Certificate of Order issued on 20th October 2016.
22. That being the case and this being an application for orders of *mandamus* to compel the Respondents to pay, I find the application has merit and is allowed and I therefore issue an order of *mandamus* compelling the Respondents to pay the *ex parte* applicants through MS Julius Juma & Co. Advocates the sum of Kshs 2,592,970 being the costs assessed by the Deputy Registrar in ELRC Petition No 10 of 2015 and certified by the Certificate of Order issued on the 20th October 2016.
23. The Respondents will pay costs of this application.

JUDGMENT DELIVERED VIRTUALLY THIS 25TH DAY OF JUNE, 2024.

HON. LADY JUSTICE HELLEN WASILWA



JUDGE

In the presence of: -

N/A for the parties

C/A - Fred

